

EXHIBIT C

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4 - - - - -x
5 HOWARD CLARK, TODD HALL, ANGELA PIRRONE,
6 individually, on behalf of all others
7 similarly situated, and the general
8 public,

9 Plaintiffs,

10 -against-

11 THE HERSHEY COMPANY, a Delaware
12 corporation,

13 Defendant.

14 - - - - -x
15 1133 Avenue of the Americas
16 New York, New York

17 April 2, 2019
18 10:08 a.m.

19 VIDEO DEPOSITION of ANGELA PIRRONE, a
20 plaintiff in the above-entitled action,
21 held at the above time and place, taken
22 before Jeremy Richman, a Shorthand
23 Reporter and Notary Public of the State of
24 New York, pursuant to the Federal Rules of
25 Civil Procedure, and stipulations between
Counsel.

1
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15
16 **BY: JANE M. METCALF, ESQ.**
17 **(jmetcalf@pbwt.com)**

18 **PRESENT:**

19 **TODD HALL**

20 * * *

1 A. Correct.

2 Q. Why are you suing The Hershey
3 Company?

4 A. For misrepresentation that I
5 was under the assumption that their
6 product labeling was in fact true, and
7 I've come to learn that it wasn't.

8 Q. Okay. What products are you
9 talking about?

10 A. Brookside chocolate covered
11 fruit.

12 Q. So you believe that the
13 product labeling for Brookside
14 chocolate covered fruit was not true?

15 A. Correct.

16 Q. What aspect of the product
17 labeling do you think was not true?

18 A. The fact that it was labeled
19 natural ingredients.

20 Q. The fact that it was labeled
21 natural ingredients?

22 A. Correct.

23 Q. Is there anything else?

24 A. No artificial ingredients.

25 Q. Okay. So you are suing The

1 Hershey Company for labeling its
2 product no artificial ingredients and
3 you believe that that was not true?

4 A. Correct.

5 Q. Anything else on the
6 Brookside product labels that you
7 believe was not true?

8 A. No.

9 Q. And a little more
10 specifically, which products are you --
11 does your lawsuit pertain to?

12 A. The chocolate covered
13 berries; blueberries, pomegranate.

14 Q. So these are the Brookside
15 chocolate covered ball products, right?

16 A. Yes.

17 Q. And you believe you bought
18 some of those products?

19 A. I know I did.

20 Q. Okay. And which of those
21 products did you buy?

22 A. The blueberries, the
23 pomegranate.

24 Q. Okay. Is it the açai
25 blueberry flavor, does that sound

1 right?

2 A. Yes.

3 Q. And you bought the
4 pomegranate flavor?

5 A. Correct.

6 Q. Any other?

7 A. The blueberry.

8 Q. So you said the blueberry, by
9 which I think you mean the açai
10 blueberry. Does that sound right, the
11 açai blueberry flavor?

12 A. If it's the blueberry, yes.

13 Q. Well, I'll tell you, I don't
14 think there's a straight up blueberry
15 flavor, so I think we're talking about
16 açai blueberry.

17 A. The same thing, okay.

18 Q. And then you bought the
19 pomegranate flavor?

20 A. Yes.

21 Q. And any other flavors?

22 A. I believe there was another
23 berry, but those were primarily the two
24 that I purchased.

25 Q. Okay. So sitting here today,

1 you can't remember purchasing any
2 besides the açai blueberry and the
3 pomegranate?

4 A. And the pomegranate, correct.

5 Q. Okay. And do you have the
6 same complaints about the two flavors
7 you bought, açai blueberry and
8 pomegranate, or are they different in
9 some way?

10 A. Same complaint.

11 Q. Okay. When was the last time
12 that you bought either açai blueberry
13 or pomegranate flavored Brookside
14 products?

15 A. 2010, 2011.

16 Q. 2000 --

17 A. 2011 maybe.

18 Q. 2010 or 2011. And are you
19 pretty confident that that was the
20 first time you bought them?

21 A. Yes.

22 Q. And where did you buy them?

23 A. In south Florida.

24 Q. Okay. Do you remember what
25 store?

1 A. Palm Beach Gardens, Florida
2 Publix.

3 Q. Okay. And which flavor was
4 it you bought for the first time?

5 A. The blueberry.

6 Q. And at that time that you
7 first bought the açai blueberry flavor,
8 do you recall about what you paid?

9 A. Maybe close to \$5 a bag.

10 Q. So you bought it for the
11 first time in 2010 or 2011, and you
12 paid close to \$5?

13 A. Five, six. Anywhere between
14 four and change to \$6.

15 Q. And that was at -- that was
16 at a Publix down in Florida?

17 A. Perhaps there was a CVS as
18 well.

19 Q. Okay. And that first time in
20 2010 or 2011, why did you buy the
21 product?

22 A. So my daughter was born
23 June 2010 --

24 Q. Mm-hmm.

25 A. -- and I thought it would be

1 a fun, safe snack, treat. Not just a
2 snack, a treat.

3 Q. I know how those days ago.
4 So you bought it to eat as a snack
5 right after having your daughter, which
6 is your -- who was your first child,
7 right?

8 A. Yes. And it was great for
9 potty training, too, as a reward.

10 Q. You were potty training your
11 daughter when she was just born?

12 A. In 2011, so she was a year.

13 Q. Wow, still pretty impressed.

14 A. Started early.

15 Q. So you believe you started
16 buying the products sometime during
17 your daughter's infancy?

18 A. Correct. Toddler.

19 Q. During her first year?

20 A. Yes.

21 Q. Okay.

22 A. Doing the math.

23 Q. Okay. So you bought the Açaí
24 & Blueberry product the first time, you
25 wanted to eat it yourself?

1 A. Yes.

2 Q. And also give it to your
3 daughter to eat?

4 A. Correct.

5 Q. And so I take it you thought
6 it looked tasty?

7 A. Yes.

8 Q. Do you like dark chocolate?

9 A. Yes.

10 Q. Did you have an understanding
11 when you made that first purchase as to
12 whether the product had artificial
13 flavors?

14 A. Say that again.

15 Q. Did you have an understanding
16 when you bought that product the first
17 time as to whether it had artificial
18 flavors in it?

19 A. I presumed it did not,
20 because it clearly said it did not.

21 Q. Okay. So when you made that
22 first purchase, you believed that the
23 product did not contain artificial
24 flavors?

25 A. Correct.

1 Q. And what made you believe
2 that?

3 A. It was labeled as such.

4 Q. So you recall seeing a label
5 somewhere on the product that said no
6 artificial flavors?

7 A. Yes.

8 Q. And when did you first notice
9 that?

10 A. Upon inspecting the product,
11 before purchasing, before making the
12 decision to purchase.

13 Q. So you were in a Publix in
14 2010 or 2011 and you were thinking
15 about buying the product because it
16 looked tasty, right?

17 A. Right.

18 Q. And you recall picking it up
19 and looking at it in the store and
20 seeing no artificial flavors; is that
21 right?

22 A. Yes. Correct.

23 Q. And where on the product
24 package was that?

25 A. Right in front.

1 Q. What part of the front?

2 A. Top -- top part probably.

3 Q. Okay. And --

4 A. Also on the back.

5 Q. Do you recall looking --
6 turning it around and looking on the
7 back?

8 A. Yes.

9 Q. And you also saw no
10 artificial flavors on the back?

11 A. Mm-hmm.

12 Q. And again, this is back when
13 you were first buying the product in
14 2010 or 2011?

15 A. Mm-hmm. Yes.

16 Q. And then after you took the
17 product home, did you like it?

18 A. Yes.

19 Q. Okay. So did you continue to
20 buy the product every so often for a
21 period of years?

22 A. Every so often.

23 Q. About how often?

24 A. Maybe once a quarter.

25 Q. Very businesslike way of --

1 A. Every three months or so.

2 Q. So from 2010, 2011-ish, from
3 then until 2018 --

4 A. Correct.

5 Q. -- you bought the Açaí &
6 Blueberry product about once every
7 three months?

8 A. Correct.

9 Q. And throughout that period,
10 how much did you typically pay for the
11 products?

12 A. 4, \$5 a bag.

13 Q. Okay. So you previously, I
14 think, said that you paid about \$5 for
15 your first purchase?

16 A. 4 to \$6.

17 Q. Okay. So you paid somewhere
18 in the 4 to \$6 range that first time?

19 A. Mm-hmm.

20 Q. And then did that price stay
21 more or less consistent throughout the
22 seven or eight years that you were
23 buying the product?

24 A. If memory serves me
25 correctly, there would be a promotion

1 of like a twofer, buy two for a certain
2 promotional price, if I recall.

3 Q. Okay. So every so often you
4 would see a sale where you would get
5 two for the price of one?

6 A. Correct, or some sort of
7 promotion to incentivize, it's cheaper
8 to buy two per bag versus just one.

9 Q. So you would see a promotion
10 like that every so often and --

11 A. And take advantage of it.

12 Q. Okay. So you would see a
13 promotion like that every so often and
14 take advantage of it, right?

15 A. Correct.

16 Q. And other than that, did the
17 price of the Açai & Blueberry flavored
18 Brookside product stay pretty
19 consistent from 2010, 2011 to 2018,
20 when you were buying the product?

21 A. I don't think so. I think it
22 went up, just like everything else,
23 over the seven, eight years.
24 Everything goes up in price.

25 Q. But you don't remember a

1 specific point in time where it went up
2 noticeably, you're just assuming it
3 went up because everything goes up?

4 A. Correct.

5 Q. Okay. And, similarly,
6 throughout that time, the frequency
7 with which you bought the products
8 stayed about constant, is that right,
9 you bought them about every three
10 months?

11 A. Yeah, yes.

12 Q. Okay. And we've been talking
13 about the Açaí & Blueberry. So you
14 mentioned you also bought the
15 pomegranate?

16 A. Mm-hmm.

17 Q. Let's go back to that. So
18 when you first purchase of the
19 pomegranate flavored Brookside product,
20 was that also in 2010, 2011?

21 A. Yes.

22 Q. And you suspect it was at
23 that same -- or I shouldn't say
24 suspect. Was it at that same Publix in
25 south Florida?

1 A. Yes.

2 Q. It's a great grocery store,
3 by the way. I really wish we had that
4 up here.

5 A. I know.

6 Q. And you think that was about
7 in 2010 or 2011?

8 A. Correct.

9 Q. And how confident are you in
10 that recollection, that 2010, 2011
11 recollection?

12 A. Pretty confident.

13 Q. Okay. And the first time you
14 bought the pomegranate product, did you
15 have an understanding as to whether
16 that product contained artificial
17 flavors?

18 A. I assumed it didn't, because
19 it was also labeled that it did not
20 contain artificial flavors.

21 Q. Okay. So as with the Açaí &
22 Blueberry product, you recall seeing no
23 artificial flavors the first time you
24 purchased it in 2010 or 2011?

25 A. Yes.

1 Q. And did you notice that no
2 artificial flavors statement on the
3 front of the package?

4 A. Yes.

5 Q. And where on the front of the
6 package?

7 A. Same as with the blueberry,
8 probably top part.

9 Q. Did you notice it anywhere
10 else on the package?

11 A. In the back.

12 Q. And did you notice this
13 before or after you bought the product?

14 A. Before.

15 Q. And was this the same like
16 shopping trip where you bought the Açai
17 & Blueberry?

18 A. Yes.

19 Q. So you picked up both at the
20 same time and thought you'd try both?

21 A. Yes.

22 Q. And then were your purchasing
23 habits for the pomegranate flavor the
24 same as you described for the Açai &
25 Blueberry flavor?

1 A. Yes.

2 Q. Okay. So it was every three
3 months?

4 A. Correct.

5 Q. And you paid between 4 and
6 \$6?

7 A. Correct.

8 Q. And occasionally it was on
9 promotion?

10 A. Yes.

11 Q. And you believe that the
12 price probably went up because
13 everything goes up, but you don't
14 remember a particular change in price
15 over that period from 2010 to 2018?

16 A. Correct.

17 Q. And other than your
18 understanding that the products did not
19 have artificial flavors, did you have
20 any other understanding of the
21 ingredients they contained?

22 A. Aside from some chocolate and
23 the fruit.

24 Q. Okay. So you thought they,
25 obviously, had chocolate, and you

1 understood that there was a fruity
2 center?

3 A. Not just a fruity center, but
4 the actual fruit.

5 Q. What do you mean by the
6 actual fruit?

7 A. Meaning a blueberry covered
8 in chocolate, like an actual blueberry
9 or an actual pomegranate.

10 Q. So your understanding was
11 that the Açaí & Blueberry Brookside
12 product was a chocolate covered
13 blueberry?

14 A. Correct.

15 Q. And after you took it home
16 and ate it for the first time, did you
17 have any doubts about whether that was
18 the case?

19 A. The actual product and -- so
20 the picture on the packaging, it's -- I
21 recall it's a sliced chocolate covered
22 blueberry, açai blueberry, and it looks
23 like there's an actual blueberry
24 covered in chocolate.

25 Q. Okay. So you're saying based

1 on the picture on the front, when you
2 first bought the Açai & Blueberry
3 product --

4 A. Mm-hmm.

5 Q. -- you thought you were
6 buying a dark chocolate covered
7 blueberry?

8 A. Yes.

9 Q. And when you took the product
10 home and ate it for the first time, did
11 you still think it was a chocolate
12 covered blueberry?

13 A. It looked more like a
14 dehydrated blueberry. In my mind I
15 thought maybe I would have like a fresh
16 blueberry covered in chocolate.

17 Q. And it didn't seem like that,
18 did it?

19 A. No.

20 Q. And it's a little chewy,
21 right?

22 A. Yes.

23 Q. So it was not really the
24 texture of a blueberry; is that fair?

25 A. Combination between the

1 chocolate and the fruit.

2 Q. So you believed that the
3 texture was consistent with it being a
4 blueberry?

5 A. Not necessarily.

6 Q. What I'm just trying to
7 understand is, you said you thought it
8 was a chocolate covered blueberry from
9 looking at the picture.

10 A. Right.

11 Q. After you ate it, did you
12 still think it was a chocolate covered
13 blueberry?

14 A. Yes, as opposed to a
15 chocolate covered cantaloupe, right.
16 No -- I mean yes.

17 Q. Well, not just as opposed --
18 I'm not just asking was it blueberry
19 versus some other fruit --

20 A. Like a dehydrated blueberry
21 versus a fresh blueberry.

22 Q. So you believed that it was a
23 chocolate covered blueberry that was
24 dehydrated?

25 A. Perhaps.

1 Q. Okay. And are the balls, are
2 they all kind of the same size?

3 A. Relatively speaking, yes.
4 Exactly...

5 Q. Did you ever notice them
6 being different sizes from one another?

7 A. No.

8 Q. Did you ever look at the
9 ingredient list of the product?

10 A. Yes.

11 Q. Okay. So did you know the
12 product contained pectin?

13 A. Yes.

14 Q. Did you know it contained
15 citric acid?

16 A. Yes.

17 Q. Did you know it contained
18 maltodextrin?

19 A. I don't recall.

20 Q. But you recall looking at the
21 ingredient list?

22 A. Yes.

23 Q. So you knew it had other prod
24 -- other ingredients besides dark
25 chocolate and blueberry?

1 A. Yes.

2 Q. Okay. And at what point did
3 you look at the ingredient list?

4 A. Prior to purchasing,
5 inspecting the bag.

6 Q. So at the time that you
7 bought it, you knew that there were
8 other ingredients besides dark
9 chocolate and blueberry, right?

10 A. Yes.

11 Q. And you mentioned that you
12 are suing Hershey because you think the
13 statement no artificial flavors was
14 false or misleading, right?

15 A. Yes.

16 Q. Is there anything else on the
17 label that you think was false or
18 misleading?

19 A. No.

20 Q. So you don't think the
21 ingredient list was false or
22 misleading?

23 A. No.

24 Q. Okay. And -- sorry. Do you
25 have any records of the purchases you

1 made of the Brookside products?

2 A. Do I have records?

3 Q. Yes, like either through a
4 receipt or through like a club account
5 with a store or anything like that?

6 A. No.

7 Q. Okay. And you mentioned
8 buying them at a Publix in south
9 Florida. And did you say you were
10 living down in Florida at the time?

11 A. Yes, up until 2014.

12 Q. Okay. So while you were down
13 in Florida, you were buying the
14 products every three months, and you
15 bought them at a Publix; is that right?

16 A. Yes.

17 Q. What town was that in?

18 A. Palm Beach Gardens, Jupiter.

19 Q. Palm Beach Gardens or
20 Jupiter, or are they the same thing?

21 A. They're next to each other.

22 Q. So which is the Publix in?

23 A. Palm Beach Gardens.

24 Q. Do you remember buying it
25 anywhere else down in Florida?

1 A. Yes, at CVS in Jupiter.

2 Q. CVS in Jupiter. Anywhere
3 else?

4 A. CVS in Palm Beach Gardens,
5 maybe Publix in Jupiter.

6 Q. And that's all the places you
7 can remember buying it in Florida?

8 A. In Florida, yes.

9 Q. All right. And then in 2014,
10 you said you relocated to New York?

11 A. Correct.

12 Q. And you continued your every
13 three-month or so purchases of the
14 products?

15 A. Correct.

16 Q. And you -- where did you buy
17 the products in New York?

18 A. Unfortunately, not Publix.

19 Q. Very unfortunate.

20 A. Stop & Shop.

21 Q. Sorry.

22 A. Stop & Shop, CVS in
23 oceanside.

24 Q. So you live in oceanside?

25 A. Yes.

1 Q. So you bought it at the Stop
2 & Shop there?

3 A. Yes.

4 Q. You bought it at the CVS
5 there?

6 A. Yes.

7 Q. Anywhere else you can
8 remember buying it?

9 A. No.

10 Q. Okay. And just to close this
11 loop, because I know we're sort of
12 dealing with two different flavors
13 here, so you mentioned that you looked
14 at the ingredient list of the Açai &
15 Blueberry product before you bought it.

16 Did you look at the
17 ingredient list of the pomegranate
18 product before you bought it?

19 A. Yes.

20 Q. And you don't claim now that
21 there was anything false or misleading
22 about either of those ingredient lists,
23 do you?

24 A. No.

25 Q. So throughout this period

1 that you were buying the products, up
2 until you, as you say, learned that
3 they contained artificial flavors, were
4 you satisfied with the products?

5 A. Yes.

6 Q. So you liked the way they
7 tasted?

8 A. Yes.

9 Q. Did you think the Açai &
10 Blueberry tasted like blueberry?

11 A. Yeah.

12 Q. Did you think the pomegranate
13 tasted like pomegranate?

14 A. More tart, yeah.

15 Q. The pomegranate was more tart
16 than the Açai & Blueberry?

17 A. Maybe a little bit.

18 Q. So did the two flavors taste
19 a little bit different from each other?

20 A. A little bit.

21 Q. Okay. And so you ate the
22 product yourself, right?

23 A. Yes.

24 Q. And who else in your
25 household ate them?

1 A. My children.

2 Q. So you gave your daughter the
3 Brookside products starting when she
4 was about one?

5 A. Yes.

6 Q. And then until she was --
7 well, recently, so until she was like
8 seven?

9 A. Yes.

10 Q. Okay. By the way, your
11 daughter has a much more sophisticated
12 palate than mine. Good for you. We'll
13 have to talk about what you're doing
14 after this is up.

15 And so your son also ate the
16 product every so often starting when he
17 was how old?

18 A. Maybe about the same, a year
19 or so.

20 Q. And up until you stopped
21 buying them in 2018?

22 A. Correct.

23 Q. And you said you liked dark
24 chocolate. Are there other dark
25 chocolate products you've bought in the

1 past five years?

2 A. I like all chocolate.

3 Q. Okay. So all chocolates. So
4 are there other chocolate products
5 you've bought in the past five years?

6 A. Sure.

7 Q. So what are some of those?

8 A. M&Ms, Snickers. Are we
9 talking about like Halloween? We buy
10 everything.

11 Q. Well, let's lay aside
12 Halloween. Kind of just like --

13 A. Okay.

14 Q. -- a treat for your kids --

15 A. Sure.

16 Q. -- or a snack for yourself.
17 M&Ms, Snickers, you buy those for those
18 reasons?

19 A. Yeah.

20 Q. Anything else, in terms of a
21 chocolate product?

22 A. 100 Grand.

23 Q. Okay. That's a good classic
24 one. And --

25 A. Peanut M&Ms.

1 Q. Okay. So those are kind of
2 your go-to candies, M&Ms, Snickers, 100
3 Grand?

4 A. Mm-hmm.'

5 Q. Do you know if those contain
6 artificial flavors?

7 A. I would assume they do,
8 because they do not -- they're not
9 labeled.

10 Q. So you don't avoid artificial
11 flavors in everything you buy?

12 A. I try, but not everything.

13 Q. Okay. And what was it --
14 when you bought the Brookside products,
15 what was it that made you decide that
16 you wanted to avoid artificial flavors
17 in that case?

18 A. So I just became a parent,
19 and buying more natural, organic,
20 non-GMO became a lot more important.

21 Q. And do you recall seeing any
22 statement that the Brookside products
23 were organic?

24 A. No.

25 Q. Do you recall seeing any

1 statement that they were non-GMO?

2 A. No.

3 Q. Do you recall seeing any
4 statement other than the artificial
5 flavors statement that suggested to you
6 that they were natural?

7 A. Yes.

8 Q. What was that?

9 A. I recall seeing that it was
10 natural flavors, natural product.

11 Q. Okay. Why don't we go ahead
12 and mark one of these. So let's -- I'm
13 actually going to mark both of these at
14 the same time, the pomegranate and the
15 Açaí & Blueberry --

16 A. May I get more hot water?

17 MS. METCALF: Sure. Do you
18 want to take a break or --

19 MR. HOUCHIN: Yes, if we
20 could go off the record for
21 five maybe minutes for a short
22 break.

23 THE WITNESS: I just need
24 water because I have the air
25 conditioning blowing right on me.

1 MS. METCALF: Do you want to
2 take a break or do you want to just
3 let her get up and get water?

4 MR. HOUCHIN: Yes, you can
5 just get water, unless you need a
6 break.

7 THE VIDEOGRAPHER: Just a
8 reminder, we're still on the vide
9 record.

10 MS. METCALF: Yes.

11 THE WITNESS: Thank you.

12 MS. METCALF: He'll mark
13 these.

14 (Exhibit 1, marked for
15 identification, A Package For the
16 Açai & Blueberry Flavored Brookside
17 Product.)

18 (Exhibit 2, marked for
19 identification, A Package For the
20 Pomegranate Flavored Brookside
21 Product.)

22 Q. Okay. So, Ms. Pirrone,
23 you've got in front of you Exhibit 1,
24 which is a package for the Açai &
25 Blueberry flavored Brookside product,

1 and Exhibit 2, which is a package for
2 the pomegranate flavored Brookside
3 product.

4 And I understand you can't
5 remember every detail, but is this
6 about what you recall the packages
7 looking like that first time you bought
8 the product in 2010 or 2011?

9 A. Yes.

10 Q. And do you recall the product
11 label changing at any point during the
12 period that you were purchasing it?

13 A. No.

14 Q. And you mentioned that the
15 product packaging led you to believe it
16 was natural. What does natural mean to
17 you?

18 A. This looks like a natural
19 blueberry.

20 Q. Well, I'm asking a little
21 different question. I'm asking what
22 does natural mean to you?

23 A. Healthier.

24 Q. Okay. So you believe that
25 the products were healthier than what?

1 A. A non-natural product, a
2 product consumed -- produced in a lab
3 versus a tree or a plant.

4 Q. So did you think that the
5 product had more nutrients than other
6 chocolate products?

7 A. That this is much healthier
8 than a peanut M&M.

9 Q. So you believed it was
10 healthier than a peanut M&M. And can
11 you tell me what on the product made
12 you think it was healthier than a
13 peanut M&M?

14 A. There's a fruit, a berry,
15 with lots of antioxidants.

16 Q. So there was a picture of a
17 blueberry on it, correct?

18 A. Correct.

19 Q. And that's what made you
20 think it was healthier than a peanut
21 M&M?

22 A. Yes.

23 Q. And that's because a
24 blueberry is healthier than an M&M?

25 A. Correct.

1 Q. And you also mentioned you
2 turned over the product and you looked
3 at the ingredient list --

4 A. Yes.

5 Q. -- before buying it; is that
6 right?

7 A. Yes. And in 2011, I didn't
8 need these, but...

9 Q. Well, 2011 was a while ago.
10 And did you see blueberry on the list
11 of ingredients here?

12 A. On the list of ingredients?

13 Q. Right.

14 A. This is the blueberry?
15 Raspberry, blueberry, apple, cranberry,
16 yes.

17 Q. Well, so, to be clear, so
18 looking at the ingredient list here, it
19 says, "Apple juice concentrate,
20 raspberry juice concentrate, blueberry
21 juice concentrate."

22 A. Mm-hmm.

23 Q. So what, in your
24 understanding, is blueberry juice
25 concentrate?

1 A. Juice from a blueberry.

2 Q. Okay. So you understood
3 based on this ingredient list that
4 there was juice concentrates in the
5 product?

6 A. Yes.

7 Q. And that's what led you to
8 believe that it was more natural?

9 A. Yes. Plus it's in big bold
10 letters, different colors that there's
11 nothing artificial here.

12 Q. Okay. So you believed that
13 the product was more natural because it
14 said no artificial flavors and because
15 it said that it had these juice
16 concentrates in the ingredient list?

17 A. Correct.

18 Q. And are you claiming now in
19 your lawsuit that it doesn't actually
20 have those juice concentrates?

21 MR. HOUCHIN: Objection,
22 form. You can answer.

23 THE WITNESS: I can answer?

24 MR. HOUCHIN: Yes, go ahead
25 and answer.

1 A. That it does not contain
2 concentrate?

3 Q. Right. Are you saying it
4 doesn't have these juice concentrates
5 in it?

6 A. No.

7 MR. HOUCHIN: Same objection.

8 Q. Okay. So, as you understand
9 it, these statements that there were
10 juice concentrates were true?

11 A. Yes.

12 Q. So I'm trying to under -- I'm
13 just trying to understand, and I don't
14 mean to belabor this, what is on this
15 -- what was on this package when you
16 bought it the first time that you now
17 think was misleading, other than the no
18 artificial flavors claim?

19 A. That there are ingredients in
20 the list that are not all natural, that
21 are, in fact, artificial.

22 Q. Well, so you think no
23 artificial flavors is false or
24 misleading for that reason, right? Is
25 there any other --

1 A. And colors.

2 Q. Is there any other statement
3 on the label that you think is not
4 true?

5 A. No.

6 Q. And does that also go for
7 Exhibit 2, the pomegranate product?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. Okay. So the statement that
12 you now claim is misleading is just no
13 artificial flavors?

14 A. Color.

15 Q. You claim no artificial
16 colors is misleading?

17 A. It says no artificial flavors
18 and colors.

19 Q. Right. So you think there
20 are artificial colors in the product?

21 A. I'm under the assumption that
22 if there's no artificial flavors, then
23 can the colors be natural as well, or
24 artificial as well? I assume that they
25 go hand in hand.

1 Q. Well, just separate and apart
2 from whether they go hand in hand. You
3 mentioned you do think there are
4 artificial flavors in the products, and
5 we'll talk a little bit more about that
6 later. But I'm asking, do you also
7 claim that the statement no artificial
8 colors was not true?

9 A. I don't know.

10 Q. You don't know whether no
11 artificial colors was not true?

12 A. I'm assuming that it's not
13 true.

14 Q. You're assuming that?

15 A. Yes.

16 Q. Why are you assuming that?

17 A. Because I just assume that
18 the flavors and the colors go hand in
19 hand, so if one is false, then the
20 other one is likely false.

21 Q. But you don't have a
22 particular ingredient that you think is
23 in the product that is an artificial
24 color, correct?

25 A. Correct.

1 Q. Okay. So you basically doubt
2 no artificial colors now, because you
3 think no artificial flavors was false?

4 A. Correct.

5 Q. But you don't know of an
6 artificial color that's in the product?

7 A. Correct.

8 Q. Okay. Now, you mentioned
9 that throughout the period, the
10 seven-year or so period that you were
11 buying the product, you don't recall
12 any particular changes to the way the
13 packaging looked?

14 A. I always recall it being
15 white, clean, with the picture of the
16 berry and chocolate.

17 Q. So is that no, you don't
18 recall any changes to it?

19 A. No.

20 Q. Okay. So you don't recall
21 any changes to the product packaging?

22 A. Correct.

23 Q. Did your understanding of
24 whether there were artificial flavors
25 in the product change at all throughout

1 the period you were buying it?

2 A. No.

3 Q. So the whole time you thought
4 that it did not contain artificial
5 flavors?

6 A. Correct.

7 Q. And did anything else about
8 your understanding of which ingredients
9 were in the product change throughout
10 the period that you were buying the
11 product?

12 A. No.

13 Q. And you said that throughout
14 the period you were buying these
15 products, you were happy with the way
16 they tasted?

17 A. Yes.

18 Q. Your family liked them?

19 A. Yes.

20 Q. And, sorry, it was just you
21 and your kids who ate them, or your
22 husband as well?

23 A. He might have.

24 Q. And did you ever have friends
25 over and have them at a party or

1 anything like that?

2 A. No.

3 Q. And were you -- are you
4 contending now that when you ate the
5 products, they made you or your family
6 sick in any way?

7 MR. HOUCHIN: Objection,
8 form. You can answer.

9 THE WITNESS: Oh, I thought
10 an objection I can't answer.

11 MR. HOUCHIN: No. Go ahead
12 and answer, unless I instruct you
13 not to answer.

14 A. No, they didn't make us sick.

15 Q. So do you think that the
16 products were dangerous or harmful to
17 eat?

18 A. No.

19 Q. Okay. You don't think that
20 your family has suffered any health
21 consequences or you suffered any health
22 consequences from eating them?

23 A. I hope not.

24 Q. Well, do you believe that you
25 did?

1 A. No.

2 Q. Okay. After that initial
3 purchase of the products in 2010 or
4 2011, did you ever give any further
5 thought to whether the products
6 contained artificial flavors?

7 A. Can you repeat the question?

8 Q. Sure. After you first bought
9 the products in 2010 or 2011, did you
10 ever think again about whether they
11 contained artificial flavors?

12 A. No.

13 Q. Okay. Did you ever discuss
14 with anyone your understanding that
15 they didn't contain artificial flavors?

16 A. No.

17 Q. And what is an artificial
18 flavor, as you understand it?

19 A. Something that's probably --
20 that's not a natural flavor, something
21 that is made in a lab.

22 Q. Okay. So you think that
23 something is artificial if it's made in
24 a lab?

25 A. Yes.

1 Q. So, in your mind, or as you
2 see it, an artificial flavor is any
3 food or ingredient that's made in a
4 lab?

5 A. Perhaps. I'm not a
6 scientist.

7 Q. Well, I'm not asking as a
8 scientist. I'm just asking, you know,
9 you mentioned you were interested in no
10 artificial flavors.

11 A. Correct.

12 Q. And so when you thought about
13 no artificial flavors, what did that
14 statement mean for you?

15 A. That it's healthier for me
16 and my family, something good, a treat
17 that is good for us.

18 Q. You thought it was good for
19 you because it contained nutrients?

20 A. No.

21 MR. HOUCHIN: Objection,
22 form.

23 A. That it contained a more
24 natural fruit with a treat, that is,
25 you know, chocolate. So it's not a

1 meal, it's a treat.

2 Q. So you thought it was a
3 treat, it wouldn't have the nutritional
4 content of a meal. Did you think it's
5 nutritional content was different than
6 any other candy?

7 A. Yes.

8 Q. Well, did you look at the
9 nutrition facts?

10 A. Yes.

11 Q. Okay. And you're not
12 contending that anything in the
13 nutrition facts was false or
14 misleading, right?

15 A. No.

16 Q. So you think it did have 130
17 calories per serving?

18 A. Yes.

19 Q. So all these things --
20 looking at Exhibit 1 and Exhibit 2, you
21 think all of these nutrition facts were
22 true?

23 A. Yes.

24 Q. Okay. And so, again, we're
25 only focusing on no artificial flavors;

1 that's what you claim as not true,
2 right?

3 A. Yes.

4 Q. And I'm just trying to
5 understand, just focusing on that
6 claim, because that's the only one you
7 say is not true, right?

8 Sorry. So that's the only
9 claim you say is not true, right?

10 A. Correct.

11 Q. So what does artificial
12 flavors mean to you as a consumer? And
13 I understand that you're not a
14 scientist, but you must have had some
15 idea if you were interested in it.

16 A. Mm-hmm.

17 Q. So what is an artificial
18 flavor to you?

19 A. So, something that is perhaps
20 not generated from an actual
21 pomegranate or blueberry.

22 Q. Okay. So as you understood
23 it, an artificial flavor was a flavor
24 that wasn't generated from a fruit or
25 vegetable?

1 A. Correct. From these
2 particular fruits and vegetables.

3 Q. Okay. So looking back at
4 Exhibit 1, when you saw like cranberry
5 juice concentrate, did you think this
6 was an artificial flavor?

7 A. No.

8 Q. Why not?

9 A. Because it came from a
10 cranberry.

11 Q. Well, I'm sorry, I thought
12 you said that you thought that
13 artificial flavor was anything that
14 didn't come from these particular
15 fruits and vegetables. I'm looking at
16 the Açai & Blueberry.

17 A. Right. Blueberry is included
18 here, so it's coming from a blueberry.

19 Q. Right, but I'm asking you --
20 you mentioned you thought an artificial
21 -- and I don't want to put words in
22 your mouth. If you want to say that's
23 not what I meant, go ahead and clarify.
24 But I thought I understood you to say
25 that an artificial flavor was a flavor

1 that wasn't generated from these
2 particular fruits and vegetables, Açai
3 & Blueberry.

4 A. Mm-hmm.

5 Q. And so I'm just asking, did
6 you think that cranberry juice
7 concentrate was an artificial flavor
8 because it wasn't generated from açai
9 and blueberry?

10 A. No.

11 Q. Okay. So just help me
12 understand what you believed was and
13 was not an artificial flavor, because
14 if you thought cranberry juice
15 concentrate wasn't, then you must have
16 thought some things were artificial
17 flavors and didn't come from these
18 particular açai and blueberry fruits,
19 right?

20 A. Words here that I can't
21 pronounce that do not contain berry or
22 some sort of fruits that I'm familiar
23 with.

24 Q. Okay.

25 A. But this ingredient label

1 contains many fruits that I'm very well
2 aware of.

3 Q. Yes, they're pretty familiar
4 fruits, right, raspberry --

5 A. Yes. If they didn't have a
6 fruit in here, then I would ask what
7 the heck was it made out of. What is
8 the blueberry component made of, I
9 don't see any fruits in here or
10 blueberry.

11 Q. Sure. So looking at the
12 concentrates, you can see that there
13 were flavors from the actual fruits?

14 A. Correct.

15 Q. And so you thought that no
16 artificial flavors meant we have
17 flavors from the actual fruits?

18 A. But not from the actual
19 fruit.

20 Q. Sorry. Again, I'm not trying
21 to belabor this, I'm just trying to
22 understand what you think an artificial
23 flavor is. And I feel like, you know,
24 we haven't quite communicated on that
25 yet.

1 So, again, when you -- why
2 don't we take it out of this product.
3 When you said you try to avoid
4 artificial flavors in general --

5 A. Mm-hmm.

6 Q. -- okay, when you think about
7 an artificial flavor, what do you think
8 of? What's an artificial flavor, in
9 your mind?

10 A. Soda.

11 Q. Soda, the whole thing is an
12 artificial flavor?

13 A. Like Coca Cola.

14 Q. And so you think Coca Cola
15 contains artificial flavors?

16 A. Yes.

17 Q. What makes you think that?

18 A. It's not derived from any
19 particular fruit, plant or vegetable,
20 it's made in a scientific lab, I would
21 presume. I haven't been to a Coca Cola
22 factory, where they make Coca Cola.

23 Q. I don't think they let anyone
24 into those. Sorry, go ahead.

25 A. Yeah.

1 Q. So are you saying you think
2 an artificial -- excuse me. So, in
3 your mind, an artificial flavor is a
4 food ingredient that is not derived
5 from a --

6 A. From a natural source.

7 Q. Such as a fruit, plant or
8 vegetable?

9 A. Correct.

10 Q. Okay. So when you see no
11 artificial flavors, you think no
12 ingredients derived from a fruit, plant
13 or -- excuse me, let me start that
14 over.

15 So when you see no artificial
16 flavors, you think this is a product
17 where all the ingredients are derived
18 from a fruit or a plant or a vegetable?

19 A. Yes.

20 MR. HOUCHIN: Objection,
21 form.

22 Q. Okay. And so when you looked
23 at this ingredient list on Exhibit --
24 Exhibit 1 and also Exhibit 2, you
25 thought that all of these ingredients

1 were derived from a fruit, plant or
2 vegetable?

3 A. Yes.

4 Q. Okay. And have you ever
5 heard of aspartame?

6 A. Yes.

7 Q. Do you think of that as an
8 artificial flavor?

9 A. Yes.

10 Q. What about high fructose corn
11 syrup?

12 A. Yes.

13 Q. And why do you think of those
14 as artificial flavors?

15 A. I've been told they are.
16 I've been -- I've read that they are.

17 Q. Okay. Do you remember who
18 told you that or where you read it?

19 A. Plenty of news outlets, you
20 know, collateral.

21 Q. Okay.

22 MR. HOUCHIN: Counsel, can we
23 take a short break once you're
24 finished with this line of
25 questioning?

1 MS. METCALF: Let's just go
2 ahead and take one now.

3 THE VIDEOGRAPHER: We are now
4 off the record. The time on the
5 video monitor is 11:08 a.m.

6 (Recess.)

7 THE VIDEOGRAPHER: We are now
8 on the record, the time on the
9 video monitor is 11:16 a.m.

10 Q. So, welcome back. Not that
11 we actually went anywhere. So I just
12 want to ask you a few more questions
13 about your -- this period where you
14 were buying the products.

15 So you mentioned you were
16 satisfied with how they tasted. And up
17 until 2018, when you came to believe
18 that no artificial flavors was not
19 true, up until that point, did you
20 think that they were about worth what
21 you were paying for them?

22 MR. HOUCHIN: Objection to
23 form.

24 THE WITNESS: Do I answer?

25 MR. HOUCHIN: You can answer.

1 A. No, I certainly realized I
2 was paying a little bit more.

3 Q. Well, when did you realize
4 that?

5 A. At the time I purchased them,
6 they were a little bit more, they were
7 pricier than any other treat.

8 Q. Right. So you said you paid
9 about 4 to \$6 for them?

10 A. Correct.

11 Q. But then you paid that again
12 and again --

13 A. Yes.

14 Q. -- every so often, right?

15 A. Right.

16 Q. So after you bought them the
17 first time, you thought that they were
18 -- it had been 4 to \$6 well spent,
19 right, you went and paid 4 to \$6 for it
20 again?

21 A. Correct.

22 Q. So until you learned that, as
23 you're saying, you think the labeling
24 was false and misleading, until that
25 point you thought they were pricey, but

1 worth it for you to pay 4 to \$6 for?

2 A. Correct.

3 Q. Okay. And you mentioned you
4 don't think you have a receipt or any
5 other kind of record of the times when
6 you bought these products?

7 A. I don't have a receipt.

8 Q. And as far as you know, you
9 don't have like a loyalty account with
10 any of these retailers that shows your
11 purchases?

12 A. Yes, I'm a loyalty member at
13 CVS. Whether they keep track of
14 everything, I don't know.

15 Q. Okay. So you have mentioned
16 that you bought it at -- in Florida,
17 CVS and Publix, and in New York, CVS
18 and Stop & Shop.

19 A. Yes.

20 Q. And you may have already said
21 this, but just to clarify, those are
22 the only specific places you can recall
23 buying the products?

24 A. Yes.

25 Q. And you have a CVS loyalty

1 account; is that right?

2 A. Yes.

3 Q. But as far as you know, that
4 doesn't enable you to see everything
5 you've ever bought at CVS?

6 A. Correct.

7 Q. Okay. And did you have a
8 Publix loyalty account when you were in
9 Florida?

10 A. Yes, yes.

11 Q. Do you know if that enables
12 you to see anything that you've bought
13 in the past?

14 A. The GreenWise that I
15 frequented, it's in -- you didn't
16 necessarily need to show any sort of
17 reward card or number to take advantage
18 of any of their sales.

19 Q. Well, first of all, what's
20 GreenWise?

21 A. Publix GreenWise. It was a
22 particular Publix that carried more
23 natural, organic products.

24 Q. I see.

25 A. It's no longer there.

1 Q. So -- and you're saying you
2 didn't always actually present your
3 card?

4 A. Correct.

5 Q. But what I'm asking is a
6 little different, which is, do you
7 think through your loyalty account
8 there's any way to find out what you've
9 bought in the past?

10 A. I've no -- I wouldn't have
11 any idea.

12 Q. You don't know of any way?

13 A. Not unless we call the IT
14 person at Publix or CVS.

15 Q. Okay. And you have a Stop &
16 Shop card as well?

17 A. Yes.

18 Q. And is it the same thing,
19 where you have the Stop & Shop card,
20 but you don't know of any way to use
21 that to find out what you've bought in
22 the past?

23 A. Correct.

24 Q. Do you ever use the Peapod
25 online Stop & Shop?

1 A. No.

2 Q. And you've talked a little
3 bit -- you said during this period, the
4 past seven or eight years, you've also
5 sometimes bought M&Ms and Snickers?

6 A. Particularly around
7 Halloween.

8 Q. Okay. But you've bought
9 those as treats for yourself and your
10 family from time to time, as well,
11 right?

12 A. We buy a lot during
13 Halloween, so it carries over.

14 Q. Okay. And do you recall what
15 you've bought -- what you've paid for
16 M&Ms and Snickers, typically?

17 A. A dollar. You know, two bags
18 for a dollar, maybe 50 cents.

19 Q. Two of like the single
20 serving bags?

21 A. Yeah, the little bags.

22 Q. Are you talking about the
23 fun-sized ones you buy for Halloween,
24 or are you talking about the ones for
25 --

1 A. Oh, the ones that come in the
2 bag, I mean, I don't know, \$20 for a
3 3-pound bag. I don't remember.

4 Q. Okay. So sometimes you buy
5 the single serving packages for a
6 dollar and then other times you buy the
7 bulk package for \$20?

8 A. It's mostly the bulk.

9 Q. Okay. And what about
10 Snickers, what unit do you usually buy
11 Snickers in?

12 A. I don't really -- I don't
13 recall -- my husband likes Snickers, so
14 maybe I will buy one for him at like a
15 -- at the CVS checkout counter.

16 Q. Okay. So for like a dollar
17 --

18 A. Like in the summertime, you
19 put it in the freezer and it's just a
20 summer treat.

21 Q. Sounds delightful.

22 A. I don't know.

23 Q. So it's like a dollar,
24 dollar-fifty?

25 A. Yeah.

1 Q. Okay. But you don't really
2 remember specifically what you paid for
3 products like that?

4 A. A dollar, dollar-fifty.
5 Nothing -- certainly not \$4.

6 Q. Can you remember at any point
7 during the time when you were buying
8 the Brookside product, seeing another
9 chocolate product for sale and deciding
10 you didn't want to purchase it because
11 it had artificial flavors?

12 MR. HOUCHIN: Objection,
13 form. You can answer.

14 A. Did I not purchase Brookside
15 or did I not purchase the other
16 product?

17 Q. I'm asking besides
18 Brookside --

19 A. Yeah.

20 Q. -- is there any chocolate
21 product that you can recall seeing in
22 the grocery store or in CVS and
23 deciding that you didn't want to buy it
24 because it had artificial flavors?

25 A. Yes.

1 Q. What product is that?

2 A. The York Peppermint patties,
3 because I like those in the freezer as
4 well.

5 Q. And you decided to stop
6 buying the York Peppermint Patties
7 because they had artificial flavors?

8 A. Yeah.

9 Q. What led you to think that
10 they had artificial flavors?

11 A. It's not labeled that it's
12 natural.

13 Q. So you were looking for no
14 artificial flavors on the front, and
15 when you didn't see it --

16 A. Or the back.

17 Q. Or the back. Okay. So you
18 looked at the York Peppermint Patty
19 package and when you didn't see no
20 artificial flavors, you decided you
21 didn't want to buy it anymore?

22 A. Yeah.

23 Q. Okay. So then going back to
24 the Brookside products. At some point
25 you stopped buying them, right?

1 A. Mid, late 2018.

2 Q. Mid to late 2018 you stopped
3 your every few months purchases?

4 A. Correct.

5 Q. And so about when was your
6 last purchase?

7 A. August, September.

8 Q. Okay. And why did you stop
9 buying the products?

10 A. It was brought to my
11 attention that there was a class
12 action -- a lawsuit against them.

13 Q. Who brought that to your
14 attention?

15 A. I receive e-mails about every
16 so often about particular products that
17 are being sued.

18 Q. Who do you receive the
19 e-mails from?

20 A. I don't recall.

21 Q. So did you at some point sign
22 up to receive notices of food companies
23 that are being sued for various things?

24 A. Not just food companies, any
25 company, yes.

1 Q. Okay. You signed up for
2 that?

3 A. Yes.

4 Q. Why did you sign up for that?

5 A. So I'm made aware of
6 potential products that I should
7 discontinue.

8 Q. Okay. So when you see a
9 company is getting sued, you typically
10 stop buying the product, if you were
11 buying it?

12 A. Correct. Or if I hear about
13 it on the news.

14 Q. Okay. And you at some point
15 saw that The Hershey Company was being
16 sued regarding Brookside products?

17 A. Correct.

18 Q. When did you see that?

19 A. Fall last year.

20 Q. And did you decide right
21 after you saw The Hershey Company was
22 being sued that you didn't want to buy
23 the product anymore?

24 A. Correct.

25 Q. And is that because you

1 learned something or you came to
2 believe something about the products
3 that was different from what you had
4 believed before?

5 A. Yes.

6 Q. What did you learn about the
7 products in fall 2018 that caused you
8 to stop buying them?

9 MR. HOUCHIN: Objection,
10 attorney/client privilege. I just
11 want to caution my client that
12 anything that you discussed with my
13 law firm or any of its staff
14 regarding that issue, please don't
15 disclose those communications. To
16 the extent that you learned
17 anything independent of what you
18 learned through your lawyers, you
19 can go ahead and answer.

20 Q. Well, I mean, whatever
21 knowledge you have, whatever you know
22 about the products now that you -- is
23 different from what you understood
24 before, I'm entitled to know. I'm not
25 asking you to tell me about your

1 conversations with your attorneys.

2 So I am asking you to tell
3 me, what do you -- what is different
4 about your understanding of what's in
5 the products now from what your
6 understanding was when you were buying
7 them?

8 A. Look, if I'm going to buy
9 something that's bad for me, I usually
10 buy -- it's usually at the store for
11 much cheaper. Unfortunately, anyone
12 who walks into Whole Foods or any
13 natural food store and you're going to
14 buy organic or non-GMO, it's going to
15 cost more. So if I'm buying a product
16 that's 4 to \$6, I expect it to be good
17 for me. Otherwise, I can just buy the
18 crap that's next to it down the aisle
19 for much cheaper and fully knowing that
20 it can be harmful.

21 Q. Okay. I'm trying to drill
22 down to something a little more
23 specific.

24 A. Okay.

25 Q. Which is, we've talked about

1 what you knew about the products when
2 you were buying them and then you
3 decided to stop buying them, right?

4 A. Right.

5 Q. What do you -- what did you
6 learn about the Brookside products
7 specifically that made you decide I
8 don't want to buy these anymore?

9 A. That it's probably not as
10 good for me and my children as I
11 thought it was.

12 Q. What about the Brookside
13 products did you learn that led you to
14 think that they weren't as good for you
15 and your children as you thought they
16 were?

17 A. That, in fact, that it -- the
18 label is incorrect and that it does
19 have artificial flavors.

20 Q. Okay. So you learned in
21 2018, or you say -- I mean, obviously,
22 I'm saying you claim, you learned, not
23 to mock you, but because I'm Hershey's
24 lawyer, we obviously disagree about
25 this.

1 But your position is that you
2 learned in September 2018 that the
3 products contained artificial flavors?

4 A. Correct.

5 Q. And what artificial flavors
6 do you now think that they contain?

7 A. I don't know.

8 Q. You don't know?

9 A. What artificial flavors do I
10 think?

11 Q. Right.

12 A. I don't know.

13 Q. Okay. So you believe the
14 products contain artificial flavors?

15 A. It says no artificial
16 flavors, no artificial colors.

17 Q. Well, I'm not asking what the
18 product says.

19 A. Right.

20 Q. It definitely says that,
21 right. So I'm curious, you now think
22 that they have artificial flavors in
23 them. What artificial flavors do you
24 think are in there? Is there a
25 particular ingredient that you have in

1 mind?

2 A. No.

3 Q. Okay. So you've just
4 received information that they contain
5 artificial flavors, but you don't know
6 what artificial flavors they contain?

7 A. I don't recall when I read
8 the information that indicated that
9 there's an ingredient that is not
10 natural, that it's artificial and it's
11 included in the production of this
12 product.

13 Q. Okay. And now you've said
14 you don't believe that anything on the
15 product's ingredient list is false,
16 right?

17 A. Do I believe that these
18 ingredients are in this product?

19 Q. Right. So we've said --
20 we've established that you think no
21 artificial flavors is not true, right?
22 When you look at that, you think that's
23 not true now, right?

24 A. I've been -- yes, a scientist
25 did research and identified that

1 there's artificial ingredients in here.

2 Q. Okay. Well, we'll come back
3 to the scientist part.

4 A. Okay.

5 Q. But I'm just curious.
6 Turning this over and I'm looking at
7 Exhibit 1, but I have the same question
8 about Exhibit 2. Is there anything on
9 this ingredient list that you think is
10 not accurate?

11 A. No.

12 Q. Okay. And that's the same
13 for Exhibit 2, you don't -- you don't
14 think that the ingredient list is
15 inaccurate in any way?

16 A. Correct.

17 Q. Okay. You're just saying
18 it's no artificial flavors is not true?

19 A. Correct.

20 Q. So why don't we talk about
21 the -- you mentioned a scientist did
22 research. What type of research -- so
23 just backing up.

24 Your testimony is that a
25 scientist did some type of research on

1 the Brookside products and concluded
2 that they contained artificial flavors?

3 MR. HOUCHIN: Objection,
4 attorney/client privilege.
5 Anything that you learned from my
6 law office, please don't disclose
7 that. To the extent that you have
8 independent knowledge, you can
9 answer.

10 MS. METCALF: Mike, that's
11 not right. If she learned a fact
12 from your law office, you can't
13 route facts through your law office
14 and make them privileged.

15 Q. I'm not asking you to tell me
16 anything about your communications.
17 But you -- we can look at your
18 complaint, you've alleged this in your
19 complaint, that a scientist did
20 research. And I'm entitled to ask you
21 about the allegations in your
22 complaint.

23 So, again, I'm not asking you
24 to tell me about your communications
25 with Mike, but I am asking you to tell

1 me, do you know what scientist did this
2 research on the Brookside products?

3 MR. HOUCHIN: You can answer.

4 Just --

5 A. No.

6 Q. You don't know what
7 scientist? And do you know what type
8 of research it was?

9 A. No.

10 Q. So you don't know if the
11 scientist performed any tests on the
12 product?

13 A. I would assume he or she did
14 in order to come to the conclusion.

15 Q. Okay. So your understanding
16 is that a scientist did some testing,
17 but you're not sure what exactly it
18 looked like, right?

19 A. Correct.

20 Q. And based on that testing, as
21 you understand it, a scientist
22 concluded that the Brookside products
23 contain artificial flavors?

24 A. One scientist, ten
25 scientists, I don't know how many, have

1 concluded that there is artificial
2 flavors in this product.

3 Q. Okay. And again, not asking
4 you to tell me about your communication
5 with your lawyers, but have you seen
6 any reports from these scientists or
7 results of their work like written
8 down?

9 A. No.

10 Q. Okay. And when you say you
11 don't know how many, you know there is
12 at least one, but you just don't know
13 if other scientists have done the same
14 work?

15 A. Correct.

16 Q. Have you been informed of
17 more than one test, or have you only
18 been informed of the one test?

19 MR. HOUCHIN: Objection,
20 attorney/client privilege. To the
21 extent you can answer without
22 disclosing attorney/client
23 communications, please do so.

24 A. I have not been informed.

25 Q. You haven't been informed of

1 what?

2 A. About the scientific -- the
3 details of the scientific research.

4 Q. Okay. So when you say I
5 don't know if it was one or ten
6 scientists, is that just because you
7 don't really know the details of the
8 situation? In other words -- I'm
9 sorry, that was a bad question.

10 You don't have any particular
11 reason to believe that there was more
12 than one test, right?

13 A. Correct. Correct.

14 Q. And do you know which
15 Brookside products were tested?

16 A. I would assume all.

17 Q. Okay. But you're assuming,
18 you don't know that for sure, right?

19 A. Correct.

20 Q. And so the reason that you
21 stopped buying the products is that you
22 learned that a scientist had conducted
23 research and found that they had
24 artificial flavors; is that right?

25 A. Yes, and I was misled in what

1 I was purchasing.

2 Q. Okay. But in terms of
3 what -- again, I just want to focus on
4 what you learned about the products
5 that made you think, ugh, I don't
6 really want to buy these anymore, you
7 learned that a scientist had conducted
8 research and found out that they had
9 artificial flavors?

10 A. Right.

11 Q. Is there anything else about
12 the products that you learned that
13 influenced your decision to stop buying
14 them?

15 A. No.

16 Q. Okay. Do you know whether
17 the artificial flavors in the product
18 that the scientists found were in the
19 dark chocolate part or the fruit part?

20 A. I don't know.

21 Q. Okay. And that wasn't
22 important to you, you didn't -- you
23 just wanted a product that didn't have
24 artificial flavors?

25 A. Correct.

1 Q. Okay. Have you ever heard of
2 -- well let me ask it this way. So
3 looking back at the -- Exhibit 1, the
4 ingredient list, so about like halfway
5 down there's an ingredient called malic
6 acid.

7 A. Mm-hmm.

8 Q. Do you know what that is?

9 A. No. It doesn't sound nice.

10 Q. Do you know if that occurs --
11 if malic acid occurs naturally in
12 fruits or vegetables?

13 A. Well, I know that some fruits
14 are acidic, so the acid part I assume
15 is some sort of natural, but the malic,
16 I don't know what that is.

17 Q. Okay. Did you ever notice
18 malic acid on this ingredient list
19 during the time that you were buying
20 the product?

21 A. I saw a lot of the fruit, I
22 don't recall seeing malic acid.

23 Q. Okay. But we've talked
24 about, you did read the ingredient list
25 before you bought the products, right?

1 A. Yes.

2 Q. And --

3 A. I always make sure I look at
4 the first five, because they always say
5 the first handful are the most abundant
6 in a product.

7 Q. So you read the ingredient
8 list and you focused especially on the
9 first five?

10 A. Yeah. The first couple of
11 lines, those are the most abundant in a
12 product. And as you go down the list,
13 it becomes less and less.

14 Q. Sure. And you don't recall
15 focusing specifically on malic acid
16 when you were reading this list?

17 A. No. I don't know if that's
18 the culprit.

19 Q. And I take it that you didn't
20 have any -- throughout the time you
21 were buying the products, you didn't
22 have any expectation one way or the
23 other about the way the malic acid was
24 made for use in the products?

25 A. No.

1 Q. And you didn't have any
2 expectation one way or another about
3 the function that malic acid served in
4 the products?

5 A. No. But it's probably not
6 bad, because it says no artificial
7 colors and no artificial flavors.

8 Q. Well, again, so laying aside
9 whether it's bad, I'm just asking, you
10 didn't have any understanding when you
11 were buying the products about why The
12 Hershey Company used malic acid in the
13 product; is that right?

14 A. Correct.

15 Q. Okay. And so do you know one
16 way or the other whether malic acid
17 occurs in nature?

18 A. No.

19 Q. So you don't know whether
20 it's found in particular fruits or
21 vegetables?

22 A. No.

23 Q. Okay. Do you know if there's
24 more than one way to produce malic acid
25 for use in food?

1 A. No.

2 Q. Okay. So going back to what
3 you learned about the products that
4 made you want to stop buying them. You
5 said you found out that the no
6 artificial flavors claim was false.

7 And so you've also said that
8 you are not saying anything in the
9 ingredient list was false, right?

10 A. Yes.

11 Q. So is it your understanding
12 that Hershey used an artificial flavor
13 in the product and did not disclose it
14 at all in the ingredient list?

15 A. Yes.

16 Q. Okay. So you believe that
17 Hershey used an artificial flavor in
18 the product and left it off this
19 ingredient list?

20 A. No, not necessarily.

21 Q. Okay. So you mentioned you
22 were not sure what the artificial
23 flavor is that is used, correct?

24 A. Correct.

25 Q. So my question is: Are you

1 claiming that one of these ingredients
2 is an artificial flavor, one or more of
3 these ingredients is an artificial
4 flavor, or are you claiming that
5 Hershey used an artificial flavor and
6 didn't put it on this ingredient list?

7 A. I hope that's not the case.
8 But no, I'm assuming that one of these
9 ingredients is -- makes true -- makes
10 false the fact that it's no artificial
11 flavors.

12 Q. So you believe that one of
13 the listed ingredients on this
14 ingredient list is an artificial
15 flavor?

16 A. Yes.

17 Q. But you're not sure which of
18 them is?

19 A. No, but malic acid does not
20 sound like something that should be in
21 here.

22 Q. Are there any other
23 ingredients on this list that you now
24 think are artificial flavors?

25 A. No. Like I said, there's

1 lots of fruits with concentrate. That
2 all sounds natural. The derivative of
3 malic is mal, which is bad, right? So
4 it's stuck there in the middle, fourth
5 line down --

6 Q. Okay. But, again, you're not
7 -- you haven't claimed that Hershey
8 ever left malic acid off the ingredient
9 list; is that right?

10 A. Correct.

11 Q. Okay. So you've now come to
12 suspect that one of these ingredients
13 on this list is an artificial flavor?

14 A. Yes.

15 Q. And you think it may be malic
16 acid?

17 A. It sounds like the worst
18 ingredient on this list, so perhaps,
19 yes.

20 Q. So you think that malic acid
21 sound bad, so that's what's making you
22 think it's probably the artificial
23 flavor?

24 A. In my research during being
25 notified that in fact I was misled,

1 that there is artificial flavors in
2 this product, I read that malic acid
3 was perhaps one of the ingredients that
4 does not make it -- that makes it
5 artificial.

6 Q. You think it was one of the
7 ingredients that make it artificial?

8 A. Yes.

9 Q. Are there any others?

10 A. One or the.

11 Q. Hmm?

12 A. One or the product, the
13 ingredient.

14 Q. One or the?

15 A. One -- either the only
16 product or one of others.

17 Q. Got it.

18 A. But I don't recall others.

19 Q. So you think malic acid may
20 have been the ingredient that is an
21 artificial flavor, but you're not sure
22 if there are also others?

23 A. Correct.

24 Q. And again, you don't know --
25 you mentioned some scientific testing

1 you learned about, but you're not sure
2 what was -- what in particular was
3 discovered through that scientific
4 testing?

5 A. That there's an artificial
6 ingredient, flavor in this product.

7 Q. Okay. And -- but you're not
8 sure which artificial ingredient was
9 discovered?

10 A. I recall malic acid because,
11 like I said, I remember the derivative
12 of malic is mal, which is bad.

13 Q. Well, I'm just trying to
14 understand. So malic acid is on the
15 ingredient list, right?

16 A. Mm-hmm.

17 Q. So what did the testing
18 uncover as you understand it, or maybe
19 you just don't know, which is fine, but
20 what did the testing uncover that you
21 didn't know before about ingredients in
22 the product?

23 MR. HOUCHIN: Objection,
24 attorney/client privilege. Same
25 instruction as last time.

1 A. I'm -- I don't believe that
2 Hershey's left out an ingredient, but
3 that all of the ingredients here are
4 not necessarily natural, and that, in
5 fact, one of these ingredients
6 falsifies the fact that there are no
7 natural -- no artificial flavors.

8 Q. Okay. And I'm just trying to
9 understand if there is any -- so you
10 believe that all of the ingredients in
11 the product were natural, and then you
12 learned about this --

13 A. Says so.

14 Q. -- scientific testing. And
15 I'm just trying to understand what fact
16 you learned from the scientific testing
17 that led you to believe that the
18 ingredients weren't all natural?

19 MR. HOUCHIN: Objection,
20 attorney/client privilege. And the
21 same instructions.

22 MS. METCALF: It's a fact,
23 it's not an attorney/client
24 privileged communication.

25 A. That malic acid is not in

1 fact natural.

2 MS. METCALF: Why don't we
3 take a quick break.

4 THE VIDEOGRAPHER: We are now
5 off the record. The time on the
6 video monitor is 11:52 a.m.

7 (Recess.)

8 THE VIDEOGRAPHER: We are now
9 on the record, the time on the
10 video monitor is 12:00 p.m.

11 Q. So thanks for bearing with me
12 this far, Ms. Pirrone. I just want to
13 ask a few more questions to make sure I
14 understand what you've learned about
15 the products to led you to stop
16 purchasing them.

17 So sitting here today, do you
18 have any understanding of why Hershey
19 uses malic acid in the products?

20 A. No.

21 Q. And sitting here today, did
22 you have any understanding of how
23 Hershey obtains or generates the malic
24 acid that it uses in the products?

25 A. No.

1 Q. And do you have any quarrel
2 with or objection to the way that malic
3 acid is listed on the ingredient list
4 on Exhibits 1 and 2?

5 A. No.

6 Q. And if you learned that
7 Hershey used malic acid in the
8 Brookside products as a preservative,
9 would that make you interested in
10 buying the products again?

11 A. Would it make me interested
12 in buying the product again? I don't
13 think so.

14 Q. Have you ever heard of
15 something called DL malic acid?

16 A. DL malic acid?

17 Q. Yes.

18 A. No.

19 Q. And you claim in this lawsuit
20 that if you had known that these
21 Brookside products contain artificial
22 flavors, you wouldn't have bought them
23 or you would have paid less for them;
24 is that right?

25 A. Yes.

1 Q. So you think 4 to \$6 was too
2 much for a product that contained
3 artificial flavors?

4 A. Yes.

5 Q. How much would you have been
6 willing to pay if you had liked the
7 taste just as much, but you'd known
8 they had artificial flavors?

9 A. Half.

10 Q. Okay. So you would have paid
11 like 2 to \$3 if you had known these had
12 artificial flavors; is that right?

13 A. Correct.

14 Q. And you're just coming up
15 with that figure based on your sense as
16 a consumer of what things are worth to
17 you?

18 A. Correct.

19 Q. And let's say -- and to be
20 clear, I'm not suggesting this is going
21 to happen, but I'm just asking, let's
22 say Hershey repaid you that difference
23 for every bag you had ever bought, the
24 difference between 2 to \$3 or 4 to \$6,
25 would that address all of your concerns

1 and all of your complaints?

2 A. No.

3 Q. What would you need to
4 address all of your concerns?

5 A. Hershey is an American brand.
6 As a consumer, as a mother, it's
7 associated as being a fun brand. And
8 there's a level of trust that goes with
9 the history. So if Hershey's is
10 labeling a fruit, a chocolate covered
11 fruit and letting me know that it's
12 probably healthier for me to serve this
13 to my child as a treat than an M&M or,
14 I don't know, a Reese's Peanut Butter
15 Cup, it's just -- it's misleading, I
16 guess, the fact it says no artificial.
17 And yet, a scientist identified
18 something that is making this claim
19 false.

20 Q. Okay. So I understand your
21 position is that the product was
22 misleading, the product packages was
23 misleading. But I'm asking you a
24 little bit of a different question,
25 which is, what would you want to feel

1 like you've been compensated for what
2 you think was done wrong, you
3 personally?

4 MR. HOUCHIN: Objection,
5 form. You can answer.

6 Q. And I said what if Hershey
7 provided you with the difference
8 between what you think they were worth
9 and what you actually paid. Is there
10 any other compensation you would want
11 to make you whole?

12 MR. HOUCHIN: Same objection.

13 A. That would be nice, thank
14 you. But --

15 Q. Again, I'm not offering. I'm
16 just asking what your claims are?

17 A. I would accept it, but I
18 don't -- I'm not going to continue
19 purchasing it so long as this labeling
20 continues, or maybe perhaps they want
21 to remove the ingredient that is making
22 it -- making this claim false, and
23 remove the malic acid or any other
24 ingredients in here that is artificial.

25 Q. Okay. So just -- let's just

1 close the loop on that and then we'll
2 talk about purchasing in the future.

3 So in terms of money loss
4 that you think you suffered, because of
5 -- you're claiming you suffered because
6 of this.

7 A. Right.

8 Q. There is no money loss other
9 than the difference between what you
10 think it was worth and what you
11 actually paid, right?

12 A. There is money loss, because
13 I purchased -- I spent double thinking
14 it was something healthier for myself
15 and children.

16 Q. Right. And I'm asking what
17 if Hershey paid you back that 2 to \$3
18 extra that you think you -- that you
19 maintain that you paid for these
20 products because of that claim.

21 A. Okay.

22 Q. Then would you feel you've
23 been compensated for your losses?

24 MR. HOUCHIN: Objection,
25 form.

1 A. Sure.

2 Q. And you mentioned that you're
3 not going to buy the product again.

4 MR. HOUCHIN: Objection,
5 misstates prior testimony.

6 Q. Sorry. Are you interested in
7 buying -- I won't state your testimony
8 at all. Are you interested in buying
9 Brookside products again in the future?

10 A. These particular products?

11 Q. Yes.

12 A. No.

13 Q. And that's because you think
14 they're misleadingly labeled?

15 A. Yes.

16 Q. And what if Hershey changed
17 the way that the product was labeled,
18 could you potentially be interested in
19 buying the products again?

20 A. No.

21 Q. Why not?

22 A. Not at the same price point.

23 Q. So if Hershey removed the
24 claim no artificial flavors, you would
25 not be interested in purchasing the

1 product again?

2 A. Correct.

3 Q. What if they changed -- what
4 if Hershey changed the way the product
5 was made in some way, then would you be
6 interested in buying it, in the product
7 again?

8 A. If there was no artificial
9 flavors in here, then yes.

10 Q. Okay. And can you tell me
11 what, as specifically as you can -- and
12 I understand you're not a scientist,
13 but I'm just trying to understand what
14 your claims are.

15 So with -- as specifically as
16 you can, can you tell me what would
17 Hershey have to change about the
18 product in order to make you interested
19 in buying it again?

20 A. Remove the artificial
21 ingredient or ingredients.

22 Q. And that's the most
23 specifically that you can tell me what
24 you want Hershey to do?

25 A. Yes.

1 Q. So you're not sure sitting
2 here today exactly what changes to the
3 ingredients you want Hershey to make;
4 is that right?

5 A. As you stated, I'm not a
6 scientist, I'm just a consumer and a
7 mother, but I'm assuming malic acid
8 should not be here, and that is the
9 ingredient that is making it
10 artificial. So if that was removed, if
11 it can be removed in order to preserve
12 what's in this bag until 2020 --

13 Q. Okay.

14 A. -- then I would --

15 Q. So your guess --

16 A. -- purchase it again.

17 Q. Can I ask you -- and I'm not
18 trying to put words in your mouth, I'm
19 just trying to understand what you're
20 saying. So your best guess as to how
21 Hershey would change the ingredients so
22 that you would be interested in buying
23 the products again is that it would
24 remove malic acid?

25 A. Yes.

1 Q. But you're not 100 percent
2 sure that you would be interested in
3 buying the products again if that
4 happened?

5 A. No, I would be interested in
6 purchasing the product again if the
7 artificial ingredients were removed.

8 Q. Okay. So let's break out two
9 different things here. So you are it
10 sounds like, pretty sure that you would
11 want to buy the products again if you
12 again had confidence that there were no
13 artificial ingredients in them; is that
14 right?

15 A. Put me in front of, you know,
16 the shelf at the store. Am I going to
17 be pissed off that Hershey's now is no
18 longer -- took out that ingredient, and
19 I know that and -- I don't know. I
20 don't -- maybe. Maybe, maybe not. As
21 a consumer for so many years, I was
22 misled, basically.

23 Q. So you might be interested in
24 buying the products again if there were
25 no artificial ingredients, but you're

1 feeling upset --

2 A. And they funded cancer
3 research for millions of dollars, sure.
4 And I saw that they did something good
5 with recovering their mistake.

6 Q. I see. So you're not sure
7 that a change to the ingredients would
8 make you interested in buying the
9 products again, because you feel upset
10 that you think Hershey misled you?

11 A. Yes.

12 Q. And then shifting gears to
13 what ingredient change you would want
14 to even consider buying the products
15 again, you're not sure exactly what
16 that change would be, but your best
17 guess is that it would be removing
18 malic acid; is that right?

19 A. Yes.

20 Q. Okay. Have you talked to any
21 other consumers about the Brookside
22 products ingredients?

23 A. No.

24 Q. You haven't talked to like
25 your husband or your friends about it?

1 A. Well, my husband.

2 Q. So do you know if there are
3 any other consumers who share your
4 concerns about the way that the
5 Brookside products are labeled?

6 A. This particular instance, no.

7 Q. You haven't discussed it with
8 anyone?

9 A. No.

10 Q. Okay.

11 A. Aside from my husband.

12 Q. And your husband, you said he
13 didn't eat the Brookside products; is
14 that right?

15 A. Right. I mean he may have.

16 Q. And as you understand it,
17 does he have any concerns about the way
18 they are labeled?

19 A. Not as much as I, the mother,
20 are concerned about labels.

21 Q. Fathers are never as
22 concerned, right?

23 A. Exactly.

24 Q. So it's more your thing and
25 not so much his?

1 A. Right.

2 Q. Okay. And -- sorry. Let me
3 just ask you. In your view, is any
4 food that contains malic acid
5 artificially flavored?

6 A. I would assume so, yes.

7 Q. Okay. And how much malic
8 acid do you think is in the Brookside
9 products, or don't you know?

10 A. I have no idea.

11 Q. Do you know if the amount
12 varies from flavor to flavor?

13 A. I don't know.

14 Q. Do you know what the product
15 would taste like without malic acid?

16 A. No.

17 Q. Do you know whether anything
18 about the product texture would be
19 different without it?

20 A. I don't know.

21 Q. Do you know if it would spoil
22 faster without malic acid?

23 A. Probably.

24 Q. Why do you say that?

25 A. Well, if it's a preservative,

1 it's artificial.

2 Q. So do you think malic acid is
3 a preservative?

4 MR. HOUCHIN: Objection,
5 form.

6 A. I don't know. I'm kind of
7 assuming it is.

8 Q. Why are you assuming that?

9 A. Because if you have a bowl of
10 fruit on your kitchen table and you
11 sprinkle a preservative over it to let
12 it last longer, you have now tainted
13 the fruits to last longer, right?
14 Which could be a good thing for some.
15 But if you're looking to have things
16 that are more natural and less
17 artificial...

18 Q. Well, I'm just not sure what
19 that has to do with Brookside. I'm
20 just asking, do you think malic acid is
21 a preservative or not, or don't you
22 know?

23 A. I don't know.

24 Q. Okay. And so you don't
25 know -- you don't know anything about

1 why -- I think we've already covered
2 this, but just to be sure, you don't
3 know anything about why Hershey's puts
4 it in the product?

5 A. Correct.

6 Q. And you don't know anything
7 about how Hershey gets the malic acid
8 to put in the products?

9 A. Correct.

10 Q. And so you don't know -- you
11 don't know if malic acid is a
12 preservative, right?

13 A. Correct.

14 Q. Okay. And so you don't know
15 what other functions it could serve in
16 food, if there are any, besides being a
17 flavor, right?

18 A. Right.

19 Q. Okay. I do want to go back
20 to sort of how you came to be a
21 plaintiff in this case. And again, I'm
22 not going to ask you to tell me about
23 your conversations with your lawyers.
24 I'm just trying to understand, you
25 know, your thinking when you decided to

1 become a plaintiff in this case.

2 So when, I think you
3 mentioned that you saw -- you got an
4 e-mail at some point in summer or fall
5 of 2018 about a lawsuit against The
6 Hershey Company, and at that point you
7 decided you didn't want to buy the
8 Brookside products anymore.

9 A. Correct.

10 Q. Okay. And was this e-mail
11 that you got just a notification that
12 the lawsuit was occurring, or was it
13 like an ad inviting people to join the
14 lawsuit?

15 A. It was not an ad.

16 Q. It was just a notification
17 that the lawsuit was occurring?

18 A. Yes.

19 Q. Okay. So --

20 A. Or specifically that it was
21 occurring because of a false claim.

22 Q. Right. So it was a
23 notification of a lawsuit against
24 Hershey to do with the labeling of
25 Brookside, right?

1 A. Correct.

2 Q. Okay. Now, when did you
3 begin to consider suing The Hershey
4 Company yourself?

5 A. When I was contacted by the
6 law firm.

7 Q. Okay. So to understand the
8 sequence of events, you saw -- you got
9 an e-mail about this lawsuit?

10 A. Yes. From Class Action
11 Rebates, if I'm saying that correctly,
12 if I recall.

13 Q. Okay. What's Class Action
14 Rebates?

15 A. It's -- well, class action
16 suits or something like that. It's an
17 e-mail that you -- I receive that
18 includes companies and/or products that
19 are being sued, or will be sued,
20 because of false, something false, or
21 some sort of harm has been done.

22 Q. Okay. You got this e-mail --
23 and, actually, we don't have to guess
24 about this. I think I have some things
25 that I can show you that might help you

1 remember.

2 (Exhibit 3, marked for
3 identification, Bates stamped
4 MARRONFIRM000001.)

5 Q. So, Ms. Pirrone, this is
6 Exhibit 3 to your deposition.

7 A. Right. So Class Action
8 Rebates, right.

9 Q. These are the types of
10 e-mails you get?

11 A. Yes. Once in a while. I
12 don't know how often.

13 Q. Okay. So I'll represent to
14 you that your lawyers provided this to
15 us as examples -- or, I guess, as all
16 of the advertising that they did when
17 trying to find clients for this case.

18 . And does this look like
19 the e-mail that you got?

20 A. Yes.

21 Q. Okay. So you got this e-mail
22 in the summer or fall of 2018; is that
23 right?

24 A. Yes.

25 Q. And it looks like -- I think,

1 if I'm understanding these records
2 correctly, it looks like this e-mail
3 was sort of sent around in early August
4 and then again in mid-November of 2018.

5 A. Mm-hmm.

6 Q. And which of those sounds
7 closer to the time that you remember
8 getting it?

9 A. Probably November.

10 Q. So you think you got it in
11 November. And your last purchase of
12 Brookside was in August; is that right?

13 A. Yes.

14 Q. Thereabouts?

15 A. Thereabouts.

16 Q. And you saw this e-mail --

17 A. Was it November or October?
18 I don't even -- I recall it was in the
19 fall.

20 Q. Well, I'm just going off --
21 so if you turn to the page that's Bates
22 stamped at the bottom page 4. It says
23 November the 14th for this e-mail. And
24 then on page 6, I think it says
25 November the 14th again.

1 A. Okay.

2 Q. So that's where I'm getting
3 November the 14th.

4 A. Okay.

5 Q. And that sounds to you like
6 it could be about when you saw this?

7 A. Yes.

8 Q. And this is what the e-mail
9 that you got looked like, as far as you
10 remember?

11 A. Yes.

12 Q. And you said that after you
13 saw this e-mail you decided to stop
14 buying the product?

15 A. Correct.

16 Q. And what about this e-mail
17 made you stop buying the product?

18 A. That there's something false
19 going on here, should be investigated.
20 And as a consumer, it's probably wise
21 for me to discontinue to purchase it,
22 on behalf of myself and my children.

23 Q. Okay. So you assumed based
24 on this e-mail that there was something
25 false or misleading about the Brookside

1 labeling, right?

2 A. Labeling, ingredients,
3 product itself.

4 Q. But this e-mail doesn't say
5 what the concern was, right?

6 A. Correct. It's a lot of fine
7 print here though.

8 Q. Well, I think, and I'm not
9 trying to trip you up, I think the fine
10 print is just about your lawyers, it's
11 not about --

12 A. Oh, okay.

13 Q. -- the product. But when you
14 found out that this was the subject of
15 a class action investigation, that was
16 enough for you, you thought I don't
17 want to buy this product anymore?

18 A. Correct.

19 Q. Okay. And going back to what
20 I was asking earlier, when did you
21 start to think I might like to sue The
22 Hershey Company myself?

23 A. When I was contacted by the
24 law offices of Marron. I'm not saying
25 the right name.

1 Q. And without telling me about
2 your communications, who reached out to
3 you from the Marron law firm?

4 A. Tanya.

5 Q. Do you know Tanya's last
6 name?

7 A. I have to look. Do you want
8 me to look?

9 Q. No, that's okay.

10 A. Okay.

11 Q. Is Tanya a lawyer?

12 A. I don't -- I don't know.

13 Q. Okay. So Tanya is affiliated
14 with the Marron law firm and she
15 reached out to you?

16 A. Correct.

17 Q. And when was that?

18 A. Fall 2018.

19 Q. Was that before or after you
20 saw this e-mail?

21 A. After.

22 Q. Okay. So you saw the e-mail.
23 You didn't respond to it?

24 A. No, I did respond to it.

25 Q. Oh, you did. Okay, sorry.

1 A. Yeah.

2 Q. So you looked at this lawsuit
3 and you decided you were going to stop
4 buying the product. And so here I'm
5 looking -- I'm looking at Exhibit 3,
6 the very first page, and it says, "To
7 see if you qualify to join this free
8 class action lawsuit investigation,
9 please contact the law offices of
10 Ronald A. Marron."

11 A. Correct.

12 Q. So you clicked on that link?

13 A. And put my contact
14 information.

15 Q. And did you put anything else
16 in that -- in your e-mail to the law
17 firm?

18 A. I don't think -- I don't
19 recall.

20 Q. You just provided your
21 contact information?

22 A. Yes.

23 Q. And then Tanya reached out to
24 you?

25 A. Correct.

1 Q. And Tanya -- did Tanya at
2 that point tell you a bit more about
3 what the claim was in the lawsuit?

4 MR. HOUCHIN: Objection,
5 attorney/client privilege. Yes,
6 I'm going to instruct you not to
7 answer that question.

8 Q. When did you learn what the
9 lawsuit was actually about, more
10 specifically than you can tell from
11 this e-mail?

12 A. Upon further conversations
13 with the law firm.

14 Q. Okay. And you mentioned that
15 you learned about some scientific
16 testing of some sort?

17 A. Yes.

18 Q. When did you learn about
19 that?

20 A. During conversations with the
21 attorneys.

22 Q. Well, when in time?

23 A. Late 2018.

24 Q. So after Tanya reached out to
25 you?

1 A. Correct.

2 Q. And after you had already
3 decided to stop buying the products?

4 A. Correct.

5 Q. And have you learned anything
6 else, anything at all, about the way
7 the Brookside products are made, since
8 the time when you were buying the
9 products?

10 A. No.

11 Q. You've just learned about the
12 scientific testing?

13 A. Yes.

14 Q. And at what point did you
15 decide that you were going to join the
16 lawsuit as a plaintiff?

17 A. When?

18 Q. Yes.

19 A. Late 2018.

20 Q. Okay. So this e-mail that
21 you got and this phone call from Tanya
22 and your decision to sue, did they all
23 happen pretty close to one another, in
24 November of 2018?

25 A. Yes.

1 Q. And why did you decide to sue
2 The Hershey Company?

3 A. Because as a consumer I have
4 a right to, I was misled with
5 information.

6 Q. You believed, based on the
7 scientific research that you've
8 described, that you had been misled?

9 A. Yes.

10 Q. And without telling me
11 anything else -- without telling me
12 anything at all about your
13 communications, who have you been in
14 contact with from the Marron lawsuit,
15 besides Tanya and Mike, if anyone?

16 A. No one that I recall.

17 Q. Okay. Did you have any
18 social or personal relationship with
19 anyone from the Marron law firm before
20 November of 2018?

21 A. No.

22 Q. Okay. And I just want to ask
23 if you know some people.

24 A. Okay.

25 Q. So bear with me. So you

1 don't know Ron Marron?

2 A. No.

3 Q. What about Alexis Wood?

4 A. No.

5 Q. What about lie Lilach

6 Halpran?

7 A. No.

8 Q. What about Kas Galucci?

9 A. No.

10 Q. What about Dave Reid?

11 A. No.

12 Q. What about Allison Caldwell?

13 A. No.

14 Q. What about Heather Mora?

15 A. No.

16 Q. Okay. And you mentioned that

17 you met with Mike back in like January

18 or February --

19 A. February.

20 Q. -- right?

21 Is that the only time you

22 have met with Mike?

23 A. Yes.

24 Q. Okay. As you understand it,

25 when was this lawsuit filed?

CERTIFICATION

I, JEREMY RICHMAN, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 3rd day of April, 2019.

A handwritten signature in black ink, appearing to read 'Jeremy Richman', with a long horizontal flourish extending to the right.

JEREMY RICHMAN